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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,669	01/07/2005	Yasuyoshi Ueda	21581-00500-US	2338

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EXAMINER

BARHAM, BETHANY P

ART UNIT

PAPER NUMBER

1615

MAIL DATE

DELIVERY MODE

04/13/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action **Before the Filing of an Appeal Brief**

Application No. 10/501,669	Applicant(s) UEDA ET AL.
Examiner BETHANY BARHAM	Art Unit 1615

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 March 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 15, 16, 21-24, 29 and 30.

Claim(s) withdrawn from consideration: 1-14 and 17-20.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☒ Note the attached *Information Disclosure Statement*(s). (PTO/SB/08) Paper No(s): 11/25/09

13. ☐ Other: _____.

/S. TRAN/
Primary Examiner, Art Unit 1615

Continuation of 11, does NOT place the application in condition for allowance because: the proposed claim amendment will be entered. As such claims 15-16, 21-24, and 29-30 remain rejected under 102 or 103 over the art of record Chopra which teaches adding ubiquinol to an oil/fat that is heated and further adding a sweetener and that the composition is then removed from the heat and mixed while cooled forming a oral palatable food composition such as a syrup (abstract, col.7-11 and claim 1).

Applicant's argue that the prior art does not teach or suggest solidifying or plasticizing the mixture and that it is not a homogeneous composition. The Examiner respectfully points out that the instant claims directed to a process only require i) dissolving ubiquinol in oil/fat (MP of not lower than 20 degrees C) under heating, ii) cooling the solution/composition, and iii) manufacturing the ubiquinol enriched oil/fat containing food product which the prior art teaches, no separate step of solidifying or plasticizing is listed. The limitations 'for solidification' and 'for plasticization' are not given patentable weight as they are directed to intended use. Further, the argument with respect to homogeneous oil/fat composition is not persuasive as the prior art teaches adding ubiquinol to oil/fat (tallow, lard, etc) and heating the combination and that the composition is then removed from the heat and mixed while cooled forming a product (such as syrup in Example 1), and since the process/composition of the prior art are the same as instant claimed the product formed would naturally be homogenous.